

REMARKS

Reconsideration of this application in view of the above amendments and the remarks below is respectfully requested. Claims 13 and 18 have been amended. Thus, Claims 1-4, 7-16, 18-24, 27-32, and 35-38 are pending in the application.

I. ISSUES NOT RELATING TO PRIOR ART

Claim 13 was objected to (Office Action, Page 2, Section 2). In response, Claim 13 was amended.

Claims 13-16 and 18-20 are rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter (Office Action, Page 2, Section 3). The rejection is respectfully traversed. The Office Action misquotes Claim 13, and leaves out the word “network”, which is a tangible real-world structure, physical medium, and manifestation that is not merely a computer program or listing. For at least the above reasons, the rejection of Claims 13-16 and 18-20 is defective and should be withdrawn.

II. ISSUES RELATING TO PRIOR ART

Claims 1-4, 7-16, 18-24, 27-32 and 35-38 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Balasubramanian et al. (US Patent 6,874,099) in view of Fu et al. (US Patent 6,970,873). The rejection is respectfully traversed.

Claim 1 recites automatically modifying queries based on modifications to the network, while Balasubramanian does not discuss modifying *queries* whatsoever. In responding to this argument, the Office Action states (page 9, paragraphs 3 and 4) that Balasubramanian “evidently desires a monitoring system that is easily modified when monitored devices or applications receive changes”. First, 35 USC § 103 is not satisfied

when one of a group of references “evidently desires” a claimed feature. To support a rejection under 35 USC § 103, all claimed features must be either shown in the combination of prior art. The claimed step of modifying queries is not shown in Balasubramanian. It is insufficient to contend that the reference desires a system that can be modified when the reference does not actually show that feature and does not provide a clear basis to suggest that feature to a skilled artisan.

At most, Balasubramanian only discloses modifying a monitoring system, and not the queries to that monitoring system. Thus, the rejection does not match the language of Claim 1, and the rationale of the Office Action does not support the rejection of the claim. The Office Action appears to ignore this distinction. It is clear error to ignore a claimed feature in making a rejection, or to reject something other than what is claimed.

The Office Action further argues that “Balasubramanian describes wherein monitoring program are updated or added when changes are made to monitored devices” (Office Action, page 9, bottom paragraph). Thus, the Office Action admits that Balasubramanian modifies the monitoring system, but does not modify the queries to that monitoring system, as is claimed.

Next, the Office Action states that when a modification is made to Balasubramanian’s monitoring system, it is inherently detected by the system, which updates the queries displayed in the interactive Admin GUI, referring to Balasubramanian’s col. 5, lines 14-29. Applicant disagrees. Balasubramanian does not say this. Indeed, Balasubramanian only obliquely discusses queries (col. 8, line 48), and not in the context of modifying them. Balasubramanian’s col. 5, lines 14-29 discuss the GUI 110, but never in the context of queries made therein.

Further, the claimed features cannot be said to be inherent in Balasubramanian. To establish inherency, the extrinsic evidence (in this case Balasubramanian's GUI) "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities" (MPEP 2163.07(a)). By suggesting that Balasubramanian "evidently desires" a claimed feature, the Office Action is attempting to establish inherency by probability or possibility.

For at least the above reasons, the rejections of Claims 1-4, 7-16, 18-24, 27-32 and 35-38, as well as the rejections of all claims dependent therefrom, are unsupported and should be withdrawn. All remaining Claims were rejected under 35 U.S.C. § 103 as allegedly obvious over a variety of references using Balasubramanian as a base reference. However, all of these Claims either explicitly recite or depend from other Claims which recite elements or steps which as shown above are neither disclosed nor suggested by any combination of prior art, either by Balasubramanian or by any other reference. The secondary references do not cure this deficiency of Balasubramanian, and therefore any combination of Balasubramanian with any of the secondary references cannot provide the complete combination of features recited in the remaining claims.

III. INTERVIEW SUMMARY

Applicant filed an Applicant-Initiated Interview Request Form with Applicant's Response

///

///

filed December 27, 2007. . However, an interview has not been held.

IV. CONCLUSION

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to charge any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,
HICKMAN PALERMO TRUONG & BECKER LLP

/christophertanner#41518/

Date: March 31, 2008

Christopher M. Tanner
Reg. No. 41,518

ctanner@hptb-law.com
2055 Gateway Place, Suite 550
San Jose, CA 95110-1089
Telephone: (408) 414-1238
Facsimile: (408) 414-1076